

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 08-N-14804-DFM
)	
SEAN LYMUS ANDREWS,)	
)	DECISION AND ORDER OF
Member No. 171711,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this default disciplinary matter, respondent **Sean Lymus Andrews** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 9.20,¹ as ordered by the California Supreme Court on August 27, 2008, in S164504.

In view of respondent’s misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be disbarred from the practice of law.

II. PERTINENT PROCEDURAL HISTORY

On February 17, 2009, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed its Notice of Disciplinary Charges (NDC) consisting of a single count alleging that respondent failed to comply with a California Supreme Court order that he perform the acts set out in paragraph (c) of rule 9.20 of the California Rules of Court. A copy of the NDC was properly served on respondent on February 17, 2009, by certified mail, return receipt requested,

¹ All references to rule 9.20 are to California Rules of Court, rule 9.20.

addressed to respondent at his official membership records address (official address).² On or about March 2, 2009, the return receipt was returned to the State Bar by the United States Postal Service. The return receipt bore respondent's handwritten name and indicated that it was received by respondent on February 27, 2009.

Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

The State Bar subsequently made additional efforts to communicate with respondent, including sending an email to the email address listed in respondent's official membership records.³ The State Bar's email requested a response; however, no response was received.

The court finds respondent was properly served with a copy of the NDC and that all due process requirements have been adequately satisfied. (See *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Respondent was required to file a verified response to the NDC no later than March 16, 2009. (Rules Proc. of State Bar, rules 103(a), 584.) As noted, *ante*, respondent did not file a response to the NDC. On May 4, 2009, the State Bar filed a motion for the entry of respondent's default. A copy of said motion was properly served on respondent on May 4, 2009, by certified mail, return receipt requested, addressed to respondent at his official address.

Respondent did not file a response within 10 days after service of the motion for entry of his default. Consequently, on June 5, 2009, respondent's default was entered. The order of entry of default was properly mailed to respondent's official membership records address. Respondent

was enrolled as an inactive member under Business and Professions Code § 6007, subdivision (e), effective June 8, 2009.⁴

² Pursuant to Evidence Code 452, subdivision (h), the court takes judicial notice of respondent's official membership records contact information and address history.

³ Respondent's official membership records contact information does not include a telephone number.

On June 11, 2009 the State Bar filed a request for waiver of default hearing and brief on culpability and discipline.

Respondent did not participate in the disciplinary proceedings. On June 24, 2009, the court took the case under submission for decision without a hearing.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Jurisdiction

Respondent was admitted to the practice of law in the State of California on October 3, 1994, and has been a member at all times since that date.

Factual Background

On or about August 27, 2008, the California Supreme Court filed Order No. S164504 (the Supreme Court order). The Supreme Court order included a requirement that respondent comply with rule 9.20, California Rules of Court, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the Supreme Court order.

On or about August 27, 2008, the Clerk of the Supreme Court of the State of California properly served upon respondent a copy of the Supreme Court order. Respondent received the Supreme Court order.

The Supreme Court order became effective on September 26, 2008, 30 days after it was filed. Thus respondent was ordered to comply with subdivision (a) and/or (b) of rule 9.20 of the

⁴ All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

California Rules of Court no later than on or about October 26, 2008, and was ordered to comply with subdivision (c) of rule 9.20 no later than on or about November 5, 2008.

Respondent has failed to file with the clerk of the State Bar Court a declaration of compliance with rule 9.20 (a) and (b), California Rules of Court, as required by rule 9.20(c).

Failure to Obey Supreme Court Order to Comply with Rule 9.20

The court finds that respondent is culpable of willfully failing to comply with his obligation under rule 9.20.

Rule 9.20(c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully complied with those provisions of the order entered under this rule.”

The term “willful” in the context of rule 9.20, formerly rule 955, does not require bad faith or any evidence of intent. Whether respondent is aware of the requirements of rule 9.20 or of his obligation to comply with those requirements is immaterial. “Willfulness” in the context of rule 9.20 does not require actual knowledge of the provision that is violated. It is not necessarily even dependent on showing the respondent’s knowledge of the Supreme Court’s order requiring compliance. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342; *Hamilton v. State Bar* (1979) 23 Cal.3d 868, 873-874.) The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar, supra*, 44 Cal.3d 337, 341.)

In the instant matter, respondent did not file the rule 9.20(c) affidavit with the clerk of the court by November 5, 2008, as required by the Supreme Court order.

Based on the foregoing, the court concludes that the State Bar has established by clear and convincing evidence that by failing to file the compliance affidavit as mandated under

rule 9.20(c) within the time specified in the August 27, 2008 Supreme Court order, respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court in S164504.

IV. LEVEL OF DISCIPLINE

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)⁵ There are two aggravating factors present here. (Std. 1.2(b).)

Prior Record of Discipline

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent has been disciplined twice in the past.

Effective May 3, 2006, respondent was publicly reprovved with conditions in State Bar Court Case No. 05-O-02322 for failing to competently perform legal services in a single-client matter. In mitigation, respondent had no prior record of discipline. No aggravating circumstances were involved.

In the underlying matter, respondent was suspended for two years, stayed, and was actually suspended for 90 days and until the State Bar Court terminates his actual suspension under rule 205 of the Rules of Procedure of the State Bar. The matter arose out of respondent's failure to comply with all of the terms and conditions of his public reprovval. In aggravation, respondent committed multiple acts of misconduct, failed to participate in the disciplinary proceedings, and possessed a prior record of discipline. No mitigating circumstances were found.

Indifference Toward Rectification/Atonement

⁵ All further references to standard(s) are to this source.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with rule 9.20(c), even after the NDC was filed in the present matter. (Std. 1.2(b)(v).)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) There is no evidence of any mitigating circumstance.

V. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

The standard here for assessing discipline is set out in the first instance in the rule itself. Rule 9.20(d) states, in pertinent part: “A suspended member’s willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation.” In addition, standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

Respondent’s willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure to comply with rule 9.20 undermines its prophylactic function in ensuring that all concerned parties learn about an attorney’s suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.)

Specifically, a suspended attorney's timely compliance with rule 9.20(a) performs the critical function of ensuring that all concerned parties, including clients, co-counsel, opposing counsel, courts, agencies, and other tribunals, promptly learn of the attorney's actual suspension and consequent disqualification to act as an attorney. When an attorney fails to file a rule 9.20(c) compliance affidavit, this court cannot determine whether this critical function has been performed. In addition, compliance with rule 9.20(c) keeps this court and the Supreme Court apprised of the location of attorneys who are subject to their disciplinary authority. (Cf. *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187 [construing former rule 955(c)].) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys, although he has been given opportunities to do so.

Moreover, failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him, nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to participate in this proceeding leaves the court without information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding his misconduct.

Therefore, respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his willful disobedience of the Supreme Court order.

VI. RECOMMENDED DISCIPLINE

Disbarment

The court hereby recommends that respondent **Sean Lymus Andrews** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this State.

Rule 9.20

The court recommends that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁶

Costs

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after service of this order.

Dated: September _____, 2009

DONALD F. MILES
Judge of the State Bar Court

⁶ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar, supra*, 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)